

This matter is a contested case proceeding pursuant to the Uniform Administrative Procedures Act, TENN. CODE ANN. §§ 4-5-101, *et seq.*, initiated by the Petitioner and seeking an Initial Order requiring the Respondent to: a) cease and desist from engaging in the business of title pledge lending without a Tennessee title pledge lender's license pursuant to TENN. CODE ANN. § 45-15-118(a)(1) and TENN. CODE ANN. § 45-15-105(a); b) cease and desist from collecting any moneys, including principal, interest, and any other fees paid by pledgors in connection with existing title pledge agreements or property pledge agreements, and/or otherwise be ordered to cease and desist from enforcing said existing agreements, pursuant to TENN. CODE ANN. § 45-15-118(a)(1) and TENN. CODE ANN. § 45-15-105(b); c) refund any and all fees collected without having first obtained a Tennessee title pledge lender's license pursuant to TENN. CODE ANN. § 45-15-118(a)(2); and d) pay civil penalties in the amount of twenty-five thousand dollars (\$25,000.00) pursuant to TENN. CODE ANN. § 45-15-118(a)(3).

On October 19, 2007 (10/19/07), and upon the Petitioner's motion, this Honorable Court entered an Order of Default holding the Respondent in default due to the fact that the Respondent had failed to participate in two (2), separate pre-hearing conferences. Following entry of the aforementioned Order of Default, this matter proceeded on an uncontested basis. On January 16, 2008 (01/16/08), and upon the Petitioner's motion, this Honorable Court entered an Order deeming the Petitioner's Requests for Admission admitted by operation of law due to the fact that the Respondent had failed to respond to the Petitioner's Requests for Admission.

After consideration of the pleadings, argument of counsel, and the record as a whole, it is the determination of this Administrative Judge that an Initial Order should be

entered **GRANTING** the Petitioner the relief requested. This conclusion is based upon the following findings of fact and conclusions of law:

I. FINDINGS OF FACT

1. TENN. CODE ANN. §§ 45-15-102(1) and (3) state that the policy of this state and the purpose of Title 45, Chapter 15, include ensuring "...a sound system of making title pledge loans through statewide licensing of title pledge lenders..." by the Tennessee Department of Financial Institutions (hereinafter "Department") and providing "...for the examination and regulation of title pledge lenders by the..." Department.

2. The Commissioner is responsible for the administration, enforcement, and interpretation of the Tennessee Title Pledge Act (hereinafter "Act"), TENN. CODE ANN. §§ 45-15-101, *et seq.*, and any regulations promulgated pursuant to the Act.

3. The Petitioner is the lawfully designated representative through which the Commissioner regulates title pledge lenders and the business of title pledge lending in the state of Tennessee.

4. The Respondent is a for-profit, domestic corporation incorporated under the laws of the state of Tennessee.

5. The Respondent's principal office address is located at 711 Pansy Hill Road, Harriman, Tennessee 37748.

6. The Respondent was incorporated on September 30, 1997 (09/30/1997).

7. The Respondent's corporate identification number with the Tennessee Department of State is 0338463.

8. The Respondent's registered agent for service of process is Lesei C. Gibson.

9. Lesei C. Gibson's address for service of process is 711 Pansy Hill Road, Harriman, Tennessee 37748.

10. The Respondent has never been issued a Tennessee license from the Department to lawfully engage in the business of title pledge lending in the state of Tennessee.

11. The Respondent engaged in the business of title pledge lending at five (5) separate title pledge lending locations in the state of Tennessee without having first obtained a Tennessee title pledge lender's license from the Department.

12. The Respondent engaged in the business of title pledge lending at a location named Harriman Advance Check Cashing (hereinafter "Harriman") without having first obtained a Tennessee title pledge lender's license from the Department.

13. The County Clerk's Office in Harriman County, Tennessee, has never issued a title pledge lender's license to Harriman.

14. On February 22, 2006 (02/22/06), a Compliance Examiner named Jim Simmons (hereinafter "Simmons") conducted an examination of Harriman.

15. At the time of Simmons' examination, Harriman was located at 1302 South Roane Street, Harriman, Tennessee 37748.

16. During the course of Simmons' examination of Harriman, Simmons gathered and copied a sample of the title pledge agreements that the Respondent had entered into without having first obtained a Tennessee title pledge lender's license from the Department:

<u>TPA No.</u>	<u>Date</u>	<u>Amount</u>	<u>Interest</u>	<u>Fee</u>	<u>Total Due</u>
3531	01/17/06	\$300.00	\$6.00	\$60.00	\$366.00
3439	02/03/06	\$546.84	\$10.94	\$109.37	\$667.15
3508	02/06/06	\$285.00	\$5.70	\$57.00	\$347.70
3131	01/04/06	\$121.84	\$2.44	\$24.37	\$148.65
3210	01/05/06	\$171.47	\$3.43	\$34.29	\$209.19
3503	12/09/05	\$300.00	\$6.00	\$60.00	\$366.00
3503	01/07/06	\$285.00	\$5.70	\$57.00	\$347.70
3503	02/06/06	\$270.75	\$5.42	\$54.15	\$330.32
3529	02/10/06	\$200.00	\$4.00	\$40.00	\$244.00
3512	02/13/06	\$285.78	\$5.72	\$57.16	\$348.66
3457	01/27/06	\$115.75	\$2.31	\$23.15	\$141.21

17. Simmons drafted an examination report concerning Simmons' examination of Harriman (hereinafter "Harriman examination report").

18. Simmons noted the following in the Harriman examination report: "This Lender is currently operating without a license. A violation of TCA 45-15-105(a)."

19. The Harriman examination report was signed by Simmons and by an individual named Mary Ann Turner (hereinafter "Turner").

20. Turner was Harriman's Branch Manager at the time of Simmons' examination of Harriman.

21. Turner was provided a copy of the Harriman examination report at the conclusion of Simmons' examination of Harriman.

22. The Respondent entered into the following title pledge agreements at the Harriman location without having first obtained a Tennessee title pledge lender's license from the Department:

<u>TPA No.</u>	<u>Date</u>	<u>Amount</u>	<u>Interest</u>	<u>Fee</u>	<u>Total Due</u>
3531	01/17/06	\$300.00	\$6.00	\$60.00	\$366.00
3439	02/03/06	\$546.84	\$10.94	\$109.37	\$667.15
3508	02/06/06	\$285.00	\$5.70	\$57.00	\$347.70
3131	01/04/06	\$121.84	\$2.44	\$24.37	\$148.65
3210	01/05/06	\$171.47	\$3.43	\$34.29	\$209.19
3503	12/09/05	\$300.00	\$6.00	\$60.00	\$366.00
3503	01/07/06	\$285.00	\$5.70	\$57.00	\$347.70
3503	02/06/06	\$270.75	\$5.42	\$54.15	\$330.32
3529	02/10/06	\$200.00	\$4.00	\$40.00	\$244.00
3512	02/13/06	\$285.78	\$5.72	\$57.16	\$348.66
3457	01/27/06	\$115.75	\$2.31	\$23.15	\$141.21

23. The Respondent violated Tennessee Code Annotated Section (TENN. CODE ANN. §) 45-15-105(a) by engaging in the business of title pledge lending at the Harriman location without having first obtained a Tennessee title pledge lender's license from the Department.

24. The Respondent engaged in the business of title pledge lending at a location named Kingston Advance Check Cashing Title Pawn, Inc. (hereinafter "Kingston Advance") without having first obtained a Tennessee title pledge lender's license from the Department.

25. The County Clerk's Office in Roane County, Tennessee, has never issued a title pledge lender's license to Kingston Advance.

26. On March 27, 2006 (03/27/06), Compliance Examiner Simmons conducted an examination of Kingston Advance.

27. At the time of Simmons' examination, Kingston Advance was located at 708 West Race Street, Kingston, Tennessee 37763.

28. During the course of Simmons' examination of Kingston Advance, Simmons gathered and copied a sample of the title pledge agreements that the Respondent had entered into without having first obtained a Tennessee title pledge

lender's license from the Department:

<u>TPA No.</u>	<u>Date</u>	<u>Amount</u>	<u>Interest</u>	<u>Fee</u>	<u>Total Due</u>
3000	01/06/06	\$300.00	\$6.00	\$60.00	\$366.00
3012	03/17/06	\$100.00	\$2.00	\$20.00	\$122.00
2988	01/12/06	\$250.00	\$5.00	\$50.00	\$305.00
3001	01/11/06	\$200.00	\$4.00	\$40.00	\$244.00
2783	01/16/06	\$240.00	\$4.80	\$48.00	\$292.80

29. Simmons drafted an examination report concerning Simmons' examination of Kingston Advance (hereinafter "Kingston Advance examination report").

30. Simmons noted the following in the Kingston Advance examination report: "Lender currently operating without a license. A violation of TCA 45-15-105(a)."

31. The Kingston Advance examination report was signed by Simmons and by an individual named Lester Johnson (hereinafter "Johnson").

32. Johnson was Kingston Advance's Branch Manager as well as the Respondent's District Manager at the time of Simmons' examination of Kingston Advance.

33. Johnson was provided a copy of the Kingston Advance examination report at the conclusion of Simmons' examination of Kingston Advance.

34. The Respondent entered into the following title pledge agreements at the Kingston Advance location without having first obtained a Tennessee title pledge lender's license from the Department:

<u>TPA No.</u>	<u>Date</u>	<u>Amount</u>	<u>Interest</u>	<u>Fee</u>	<u>Total Due</u>
3000	01/06/06	\$300.00	\$6.00	\$60.00	\$366.00
3012	03/17/06	\$100.00	\$2.00	\$20.00	\$122.00
2988	01/12/06	\$250.00	\$5.00	\$50.00	\$305.00
3001	01/11/06	\$200.00	\$4.00	\$40.00	\$244.00
2783	01/16/06	\$240.00	\$4.80	\$48.00	\$292.80

35. The Respondent violated TENN. CODE ANN. § 45-15-105(a) by engaging in the business of title pledge lending at the Kingston Advance location without having first obtained a Tennessee title pledge lender's license from the Department.

36. The Respondent engaged in the business of title pledge lending at a location named Oliver Springs Advance Check Cashing (hereinafter "Oliver Springs") without having first obtained a Tennessee title pledge lender's license from the Department.

37. The County Clerk's Office in Roane County, Tennessee, has never issued a title pledge lender's license to Oliver Springs.

38. On March 30, 2006 (03/30/06), Compliance Examiner Simmons conducted an examination of Oliver Springs.

39. At the time of Simmons' examination, Oliver Springs was located at 1042 Winter Gap Road, Oliver Springs, Tennessee 37840.

40. During the course of Simmons' examination of Oliver Springs, Simmons gathered and copied a sample of the title pledge agreements that the Respondent had entered into without having first obtained a Tennessee title pledge lender's license from the Department:

<u>TPA No.</u>	<u>Date</u>	<u>Amount</u>	<u>Interest</u>	<u>Fee</u>	<u>Total Due</u>
1216	03/09/06	\$500.00	\$10.00	\$100.00	\$610.00
1215	03/08/06	\$500.00	\$10.00	\$100.00	\$610.00
1214	03/06/06	\$200.00	\$4.00	\$40.00	\$244.00
1213	03/01/06	\$100.00	\$2.00	\$20.00	\$122.00
1217	03/14/06	\$300.00	\$6.00	\$60.00	\$366.00

41. Simmons drafted an examination report concerning Simmons' examination of Oliver Springs (hereinafter "Oliver Springs examination report").

42. Simmons noted the following in the Oliver Springs examination report: "Lender currently operating without a license. A violation of TCA 45-15-105(a)."

43. The Oliver Springs examination report was signed by Simmons and by an individual named Alice B. Smith (hereinafter "Smith").

44. Smith was Oliver Springs' Branch Manager at the time of Simmons' examination of Oliver Springs.

45. Smith was provided a copy of the Oliver Springs examination report at the conclusion of Simmons' examination of Oliver Springs.

46. The Respondent entered into the following title pledge agreements at the Oliver Springs location without having first obtained a Tennessee title pledge lender's license from the Department:

<u>TPA No.</u>	<u>Date</u>	<u>Amount</u>	<u>Interest</u>	<u>Fee</u>	<u>Total Due</u>
1216	03/09/06	\$500.00	\$10.00	\$100.00	\$610.00
1215	03/08/06	\$500.00	\$10.00	\$100.00	\$610.00
1214	03/06/06	\$200.00	\$4.00	\$40.00	\$244.00
1213	03/01/06	\$100.00	\$2.00	\$20.00	\$122.00
1217	03/14/06	\$300.00	\$6.00	\$60.00	\$366.00

47. The Respondent violated TENN. CODE ANN. § 45-15-105(a) by engaging in the business of title pledge lending at the Oliver Springs location without having first obtained a Tennessee title pledge lender's license from the Department.

48. The Respondent engaged in the business of title pledge lending at a location named Southern Advance Check Cashing (hereinafter "Southern Advance") without having first obtained a Tennessee title pledge lender's license from the Department.

49. The County Clerk's Office in Roane County, Tennessee, has never issued a title pledge lender's license to Southern Advance.

50. On March 29, 2006 (03/29/06), Compliance Examiner Simmons conducted an examination of Southern Advance.

51. At the time of Simmons' examination, Southern Advance was located at 611 East Tri County Boulevard, Oliver Springs, Tennessee 37840.

52. During the course of Simmons' examination of Southern Advance, Simmons gathered and copied a sample of the title pledge agreements that the Respondent had entered into without having first obtained a Tennessee title pledge lender's license from the Department:

<u>TPA No.</u>	<u>Date</u>	<u>Amount</u>	<u>Interest</u>	<u>Fee</u>	<u>Total Due</u>
2366	01/25/06	\$100.00	\$2.00	\$20.00	\$122.00
2361	01/04/06	\$125.00	\$2.50	\$25.00	\$152.50
2361	02/17/06	\$118.75	\$2.38	\$23.75	\$144.88
2371	02/14/06	\$300.00	\$6.00	\$60.00	\$366.00
2367	01/31/06	\$250.00	\$5.00	\$50.00	\$305.00
2367	03/02/06	\$250.00	\$5.00	\$50.00	\$305.00
2368	03/14/06	\$200.00	\$4.00	\$40.00	\$244.00

53. Simmons drafted an examination report concerning Simmons' examination of Southern Advance (hereinafter "Southern Advance examination report").

54. Simmons noted the following in the Southern Advance examination report: "Lender currently operating without a license. A violation of TCA 45-15-105(a)."

55. The Southern Advance examination report was signed by Simmons and by an individual named Sondra Robbins (hereinafter "Robbins").

56. Robbins was Southern Advance's Branch Manager at the time of Simmons' examination of Southern Advance.

57. Robbins was provided a copy of the Southern Advance examination report at the conclusion of Simmons' examination of Southern Advance.

58. The Respondent entered into the following title pledge agreements at the Southern Advance location without having first obtained a Tennessee title pledge lender's license from the Department.

<u>TPA No.</u>	<u>Date</u>	<u>Amount</u>	<u>Interest</u>	<u>Fee</u>	<u>Total Due</u>
2366	01/25/06	\$100.00	\$2.00	\$20.00	\$122.00
2361	01/04/06	\$125.00	\$2.50	\$25.00	\$152.50
2361	02/17/06	\$118.75	\$2.38	\$23.75	\$144.88
2371	02/14/06	\$300.00	\$6.00	\$60.00	\$366.00
2367	01/31/06	\$250.00	\$5.00	\$50.00	\$305.00
2367	03/02/06	\$250.00	\$5.00	\$50.00	\$305.00
2368	03/14/06	\$200.00	\$4.00	\$40.00	\$244.00

59. The Respondent violated TENN. CODE ANN. § 45-15-105(a) by engaging in the business of title pledge lending at the Southern Advance location without having first obtained a Tennessee title pledge lender's license from the Department.

60. The Respondent engaged in the business of title pledge lending at a location named Southern Advance Check Cashing (hereinafter "Southern Advance II") without having first obtained a Tennessee title pledge lender's license from the Department.

61. The County Clerk's Office in Roane County, Tennessee, has never issued a title pledge lender's license to Southern Advance II.

62. On March 28, 2006 (03/28/06), Compliance Examiner Simmons conducted an examination of Southern Advance II.

63. At the time of Simmons' examination, Southern Advance II was located at 728 North Gateway Avenue, Rockwood, Tennessee 37854.

64. During the course of Simmons' examination of Southern Advance II, Simmons gathered and copied a sample of the title pledge agreements that the Respondent had entered into without having first obtained a Tennessee title pledge

lender's license from the Department:

<u>TPA No.</u>	<u>Date</u>	<u>Amount</u>	<u>Interest</u>	<u>Fee</u>	<u>Total Due</u>
2995	01/24/06	\$100.00	\$2.00	\$20.00	\$122.00
2086	03/04/06	\$320.00	\$6.40	\$64.00	\$390.40
3002	03/07/06	\$300.00	\$6.00	\$60.00	\$366.00
2882	03/14/06	\$360.00	\$7.20	\$72.00	\$439.20
3021	03/16/06	\$300.00	\$6.00	\$60.00	\$366.00

65. Simmons drafted an examination report concerning Simmons' examination of Southern Advance II (hereinafter "Southern Advance II examination report").

66. Simmons noted the following in the Southern Advance II examination report: "Lender currently operating without a license. A violation of TCA 45-15-105(a)."

67. The Southern Advance II examination report was signed by Simmons and by an individual named Donna Hayes (hereinafter "Hayes").

68. Hayes was Southern Advance II's Branch Manager at the time of Simmons' examination of Southern Advance II.

69. Hayes was provided a copy of the Southern Advance II examination report at the conclusion of Simmons' examination of Southern Advance II.

70. The Respondent entered into the following title pledge agreements at the Southern Advance II location without having first obtained a Tennessee title pledge lender's license from the Department:

<u>TPA No.</u>	<u>Date</u>	<u>Amount</u>	<u>Interest</u>	<u>Fee</u>	<u>Total Due</u>
2995	01/24/06	\$100.00	\$2.00	\$20.00	\$122.00
2086	03/04/06	\$320.00	\$6.40	\$64.00	\$390.40
3002	03/07/06	\$300.00	\$6.00	\$60.00	\$366.00
2882	03/14/06	\$360.00	\$7.20	\$72.00	\$439.20
3021	03/16/06	\$300.00	\$6.00	\$60.00	\$366.00

71. The Respondent violated TENN. CODE ANN. § 45-15-105(a) by engaging in the business of title pledge lending at the Southern Advance II location without having first obtained a Tennessee title pledge lender's license from the Department.

II. CONCLUSIONS OF LAW

72. TENN. CODE ANN. § 45-15-104(a) states that "[a] title pledge lender licensed pursuant to this chapter has the power to make loans of money on pledges of personal property certificates of title or on pledges of titled personal property in accordance with the provisions of this chapter."

73. TENN. CODE ANN. § 45-15-105(a) states that "[n]o person shall engage in the business of title pledge lending without having first obtained a license. A separate license shall be required for each location from which the business is conducted."

74. TENN. CODE ANN. § 45-15-105(b) states that "[a]ny loan made without a license is void, in which case the person making the loan forfeits the right to collect any moneys, including principal, interest, and any other fee paid by the pledgor in connection with the title pledge agreement or property pledge agreement. The person making the loan shall return to the pledgor the pledged property, the titled personal property pledged, or the fair market value of the titled personal property, and all principal, interest, and any other fees paid by the pledgor. The pledgor is entitled to receive reasonable attorney's

fees and costs in any action brought by a pledgor to recover from the person making the loan, the pledged property, the titled personal property, and the principal, interest and any fees paid by the pledgor.”

75. The Findings of Fact as stated in paragraphs one (1) through seventy-one (71) of this Initial Order, incorporated by reference as though specifically set forth herein, are sufficient to establish by a preponderance of the evidence that the Respondent violated TENN. CODE ANN. § 45-15-105(a), in that the Respondent engaged in the business of title pledge lending in the state of Tennessee without having first obtained a title pledge lender’s license from the Department.

76. According to the Act, if, after notice and opportunity for a hearing, the Commissioner finds that a person has violated this chapter, or any administrative regulation issued pursuant to this chapter, the Commissioner may take any or all of the following actions pursuant to TENN. CODE ANN. § 45-15-118(a):

a) Order the person to cease and desist violating the chapter or any administrative rules issued pursuant to the chapter;

b) Require the refund of any fees collected by such person in violation of this chapter; and

c) Order the person to pay the Commissioner a civil penalty of not more than one thousand dollars (\$1,000.00) for each transaction in violation of this chapter or each day that a violation has occurred and continues.

IT IS THEREFORE **ORDERED, ADJUDGED AND DECREED** that the Petitioner has proven by a preponderance of the evidence that the Respondent violated TENN. CODE ANN. § 45-15-105(a) by engaging in the business of title pledge lending in the state of Tennessee without having first obtained a title pledge lender's license from the Department, and consequently, the Respondent is hereby **ORDERED** to do the following:

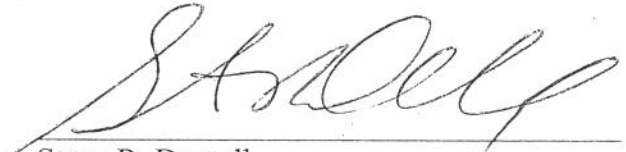
a) Cease and desist immediately from engaging in the business of title pledge lending without a Tennessee title pledge lender's license pursuant to TENN. CODE ANN. § 45-15-118(a)(1) and TENN. CODE ANN. § 45-15-105(a);

b) Cease and desist immediately from collecting any moneys, including principal, interest, and any other fees paid by pledgors in connection with existing title pledge agreements or property pledge agreements, and/or otherwise be ordered to cease and desist from enforcing said existing agreements, pursuant to TENN. CODE ANN. § 45-15-118(a)(1) and TENN. CODE ANN. § 45-15-105(b);

c) Refund any and all fees collected without having first obtained a Tennessee title pledge lender's license pursuant to TENN. CODE ANN. § 45-15-118(a)(2). The Respondent shall, within thirty (30) days of the effective date of this Initial Order, make payment in full to pledgors by check made payable to each pledgor affected and shall mail and/or deliver said check to the last known address for each pledgor. The Respondent shall provide the Petitioner written notice identifying each refund made including the name of the pledgor and the amount of the refund within thirty (30) days of the effective date of this Initial Order; and

d) Pay civil penalties in the amount of twenty-five thousand dollars (\$25,000.00) pursuant to TENN. CODE ANN. § 45-15-118(a)(3). The Respondent shall pay the civil penalties in full within thirty (30) days of the effective date of this Initial Order. The Respondent shall make payment in full by check made payable to the Tennessee Department of Financial Institutions, and shall mail and/or deliver said check to the attention of Michael Igney, Assistant Commissioner/Compliance Division, Nashville City Center, 4th Floor, 511 Union Street, Nashville, Tennessee 37219.

This Initial Order entered and effective this 12 day of February 2008.



Steve R. Darnell
Administrative Judge

Filed in the Administrative Procedures Division this 12 day of February
2008.



Thomas G. Stovall, Director
Administrative Procedures Division